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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

FILE:

Office: VERMONT SERVICE CENTER, VT Date:

JUN 01 2004

IN RE:

Applicant:

APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who on August 6, 1999, was convicted in the United States District Court, Southern District of New York for the offense of Bank Fraud. On October 25, 2001, he was removed from the United States pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony at any time after admission. The applicant is married to a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and he now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii) in order to travel to the United States and reside with his spouse and children.

The Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(9)(A)(iii) of the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated April 7, 2003.

Section 212(a)(9)(A) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

....

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary, Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

A review of the 1996 IIRIRA amendments to the Act and prior statutes and case law regarding permission to reapply for admission, reflects that Congress has (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years for others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

On appeal counsel states that the applicant is eligible for permission to reapply because section 212(a)(9)(A)(iii) of the Act provides for an exception of the inadmissibility under section 212(a)(9)(A)(ii)(II) and because the favorable factors in this matter outweigh the unfavorable ones. Before the AAO can look into the favorable and unfavorable factors it must first determine if the applicant can benefit from a waiver of inadmissibility due to his conviction of an aggravated felony. Counsel further states that the applicant is eligible for relief pursuant to section 212(h) of the Act and the applicant will be filing an application for waiver of grounds of excludability in the near future.

The AAO finds that the director erred in stating that the applicant cannot receive a waiver pursuant to section 212(a)(9)(A)(ii) of the Act. Nevertheless, this office finds the director's error to be harmless. The applicant is clearly inadmissible for having been convicted of an aggravated felony and is statutorily ineligible to receive a waiver pursuant to section 212(h) of the Act.

The record reflects that on August 6, 1999, in the United States District Court, Southern District of New York the applicant was convicted for the offense of Bank Fraud and was sentenced to 27 months imprisonment and to pay restitution of \$3.445 million.

Section 101(a)(43) of the Act defines the term "aggravated felony":

(M) an offense that-

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.

Section 212(h) of the Act provides, in pertinent part, that:

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

In the instant case the applicant's conviction is an aggravated felony for immigration purposes. The record reflects that the applicant was granted lawful permanent resident status on November 2, 1989. Since the applicant was previously admitted for lawful permanent residence and he has been convicted of an aggravated felony no waiver is available to him under section 212(h) of the Act.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.